



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 383, 384, and 385**

**[Docket No. FMCSA-2007-27659]**

**Commercial Driver's License Testing and Commercial Learner's Permit Standards**

**AGENCY: Federal Motor Carrier Safety Administration (FMCSA).**

**ACTION:** Notice of regulatory guidance and applicability of "tank vehicle" definition.

**SUMMARY:** On May 9, 2011, FMCSA published a final rule titled "Commercial Driver's License Testing and Commercial Learner's Permit Standards." Among other things, the rule revised the definition of "tank vehicle." The change required additional drivers, primarily those transporting certain tanks temporarily attached to the commercial motor vehicle (CMV), to obtain a tank vehicle endorsement on their commercial driver's license (CDL). The Agency has since received numerous questions and requests for clarification. This notice responds to questions about the new definition and the compliance date for drivers to obtain the tank vehicle endorsement.

**DATES:** *Effective date for the regulatory guidance:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Compliance date for the May, 9, 2011 final rule:* States must be in compliance with the requirements in subpart B of Part 384 (49 CFR part 384) by July 8, 2014.

**FOR FURTHER INFORMATION CONTACT:** Robert Redmond, Office of Safety Programs, Commercial Driver's License Division, telephone (202) 366-5014 or e-mail [robert.redmond@dot.gov](mailto:robert.redmond@dot.gov).

**SUPPLEMENTARY INFORMATION:**

## Background

On April 9, 2008, FMCSA issued a notice of proposed rulemaking (NPRM) to amend the CDL knowledge and skills testing standards and establish new minimum Federal standards for States to issue the commercial learner's permit (CLP) (73 FR 19282). On May 9, 2011, FMCSA published the final rule, which made a CLP holder subject to virtually the same requirements as a CDL holder, including the same driver disqualification penalties (76 FR 26854). This final rule also implemented section 4019 of the Transportation Equity Act for the 21st Century (TEA-21), section 4122 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), and section 703 of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act).

For many years, the definition of "tank vehicle" in 49 CFR 383.5 read:

*"Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in part 171 of this title. However, this definition does not include portable tanks having a rated capacity under 1,000 gallons."*

The NPRM proposed to revise the definition to read:

*"Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank having an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle."* 73 FR 19301.

The final rule further revised the definition:

*"Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank **or tanks** having **an individual***

**rated capacity of more than 119 gallons and** an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.” (Emphasis added.) 76 FR 26878.

The change from the NPRM’s definition (a single tank with an aggregate capacity of 1000 gallons) to that of the final rule (multiple tanks with an aggregate capacity of 1000 gallons) was made in response to comments to the rulemaking docket.

***Applicability of the Tank Vehicle Definition to Intermediate Bulk Containers (IBCs)***

The Dangerous Goods Advisory Council (DGAC) advised the Agency after publication of the final rule that the revised definition could have a dramatic impact on the number of drivers required to have a tank vehicle endorsement, especially if IBCs were considered tanks covered by the definition. An IBC is a container used for transport and storage of fluids and bulk materials. IBCs are generally cubic in form and, therefore, can transport more material in the same area than cylindrically shaped containers.

The DGAC noted that IBCs – which may have a capacity as high as 3,000 liters but more typically do not exceed 1,000 liters (264 gallons) – are commonly used to transport liquid hazardous materials and are subject to the Department of Transportation’s hazardous materials regulations. These packages are frequently transported by less-than-truckload (LTL) carriers. DGAC and others have asked whether FMCSA intended IBCs to be considered tanks, as that term is used in the “tank vehicle” definition. If so, many drivers who had not previously held a tank vehicle endorsement would be required to get one.

FMCSA acknowledges the trucking industry’s concerns. However, the Agency intended that the revised definition would cover IBCs secured as indicated by the

definition. For example, the aggregate capacity of four or more 1,000-liter IBCs would exceed the 1,000 gallon threshold. Drivers for many LTL carriers will therefore need to obtain a tank vehicle endorsement for their CDLs in order to maintain operational flexibility and to qualify to transport the range of cargo they normally handle.

The Agency includes in this notice new regulatory guidance on this issue. It will be posted to the Agency's web site with previously published regulatory guidance for the benefit of interested parties and publishing companies that reprint the Federal Motor Carrier Safety Regulations and guidance.

### ***Load Securement***

In response to other questions submitted to the Agency since the publication of the final rule on May 9, 2011, FMCSA confirms that the final rule covers IBCs that are attached to the vehicle, whether they are secured by bolts, straps, chains, or by blocking and bracing. The aggregate capacity of the tanks, not the details of their securement, determines the applicability of the rule. As noted above, the Agency includes in this notice new regulatory guidance which clarifies how the new tank vehicle definition covers IBCs, and in doing so emphasizes that the definition covers tanks that are permanently or temporarily attached to the vehicle.

### ***American Trucking Associations (ATA) Petition for Rulemaking***

On February 22, 2012, the ATA petitioned FMCSA to revise the tank vehicle definition. This notice and the regulatory guidance address, in part, some of the issues raised by the petition, including the applicability of the definition to IBCs, the transportation of IBCs manifested as empty or residue, and the transportation of empty storage tanks on flatbed vehicles. The Agency granted the ATA petition on March 30,

2012, and is committed to initiate notice-and-comment rulemaking that will seek input on the tank vehicle definition.

***Compliance Date for the Tank Vehicle Definition Change***

The effective date of the final rule was 60 days after publication, or July 8, 2011. While the compliance date for the State requirements under subpart B of 49 CFR part 384 is three years from the effective date of the rule, or July 8, 2014, the definition of tank vehicle is not in subpart B of part 384 and therefore is currently effective. States that adopt amendments to the Federal Motor Carrier Safety Regulations by reference, or complete their administrative adoption procedures relatively quickly, will be able to take action against a driver transporting materials in a tank vehicle without the proper endorsement before July 8, 2014.

FMCSA recommends that drivers affected by the tank vehicle definition obtain the needed endorsement as quickly as possible or investigate the requirements of the States in which they travel so that they do not transport tanks in States already requiring the endorsement.

**Commercial Driver's License Standards; Requirements and Penalties:**

**Regulatory Guidance on 49 CFR 383.5, Definitions**

***Question:*** On May 9, 2011, FMCSA revised the definition of “tank vehicle” to include any commercial motor vehicle that is designed to transport any liquid or gaseous

materials within a tank or tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. Does the new definition include loaded intermediate bulk containers (IBCs) or other tanks temporarily attached to a CMV?

**Guidance:** Yes. The new definition is intended to cover (1) a vehicle transporting an IBC or other tank used for any liquid or gaseous materials, with an individual rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or chassis; or (2) a vehicle used to transport multiple IBCs or other tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that are permanently or temporarily attached to the vehicle or the chassis.

***Question:*** On May 9, 2011, FMCSA revised the definition of “tank vehicle.”

Does the new definition cover the transportation of empty intermediate bulk containers (IBCs) or other tanks, or empty storage tanks?

***Guidance:*** No. The definition of “tank vehicle” does not cover the transportation of empty IBCs or other tanks when these containers are manifested as either empty or as residue on a bill of lading. Furthermore, the definition of tank vehicle does not cover the transportation of empty storage tanks that are not designed for transportation and have a rated capacity of 1,000 gallons or more, that are temporarily attached to a flatbed vehicle.

Issued on: May 16, 2012

Anne S. Ferro,  
Administrator

[FR Doc. 2012-12692 Filed 05/23/2012 at 8:45 am; Publication Date: 05/24/2012]